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File No. O: Poona Uni./51

Legal Department.

A **BRANCH**

Subject:—

Opinions under the

Poona University Act, 1948.

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C O N T E N T S.

Legal Department File No. O. Peona Uni. / 1951.

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		Opinions under the Peona University Act, 1951.	
1	10188 27-6-51	Sec. 60 References by Shri P.R.Dâmle to H.E. the Governer of the Chancellor of the Peona University for interpretation of the ruling given by the presiding authority of the meeting of the Academic Council, and the Board of New City Teachers in respect of certain motons moved at the said meetings.	1-6
2	544-Confl 8-6-51	Questions (1) Whether the reference made to the Chamceller by the Modern Education Society on behalf of the Newrosjee Wadia College, Peona is legal under Sec. 60 and (2) whether Circular No.175, dated 3-5-50, issued by the Registrar of the Peona University is legal.	7-10-

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It appears that certain scheme of co-ordination was recommended by the Board of University Teaching to the Executive Council and was accepted by the Executive Council. From the motions moved in the Academic Council by Professors P.R.Damle, N.G.Suru and B.D.Sattegiri, it appears that a grievance is made that the Academic Council was not consulted by the Executive Council before accepting the recommendation of the Board of University Teaching. From the ruling given by the Dean of the Arts Faculty who presided at the meetings of the Academic Council, it appears that the said motions were ruled out on the ground that the Board of University Teaching had been empowered under Statute 118 made by the Court under section 40(2) of the Act to exercise certain powers in respect of organizing and co-ordinating the instructions, teaching and training within the Poona area and that the Board of University Teaching had made recommendations to the Executive Council in virtue of these powers and further that since Executive Council had acted upon the recommendations it was not competent for the Academic Council to deal with the same subject matter. It will thus appear that Shri Damle requests the Chancellor to give his ruling whether the ruling given by the Dean of the Faculty of Arts at the meeting of the Academic Council in respect of certain x motions is or is not correct. Shri Damle has not complained that the Chairman of the Academic Council has interpreted certain Statutes or Ordinances or Regulations and that his interpretation of the said Statutes, Ordinances or Regulations is wrong. That being the case, the question at issue would not fall under section 60 of the Poona University Act, 1948, and the question

of deciding the matter by the Chancellor does not arise.

2. In ~~respect~~ support of his contentions Shri Damle relies on Section 22(1) and Section 22(2)(xiii) of the Poona University Act. Section 22(1) gives the Academic Council the control and the general regulation of and makes it responsible for the maintenance of the standards of teaching and examinations within the University. Section 22(1) though it is in general terms x would not give power to the Academic Council to exercise its powers over specific matters entrusted to other bodies. So also section 22(2)(xiii) of the Act provides that the duty of the Academic Council is generally to advise the University on all academic matters. This power will be exercised when the advice of the Academic Council is sought either by the Court or the Executive Council. The Academic Council, however, cannot compel either of the said bodies to seek advice of the Academic Council on any particular item. Section 22(2) also makes it clear that the powers to be exercised and duties to be peffermed by the Academic Council are always subject to such conditions as may be prescribed by or under the provisions of this Act. If by a Statute made by Court, the Board of University Teaching is empowered to do certain things, the Academic Council is bound to exercise its powers subject to the Statutes made by the Court. Section 32(1) of the Act also makes it clear that the Academic Council is to make regulations subject to the approval of the Exec-utive Council, which regulations are to be consistent with the Act, the Statutes and the Ordinances made under the Act. To the extent the Board or University Teaching has been empowered under section 40(2) to exercise certain functions for the purposes of organizing and co-ordinating the instructions, teaching and training within the Poona area, the powers

of the Academic Council in that respect will stand curtailed.

3. The second reference by Shri P.R. Damle is made in his capacity as a member of the Board of University Teaching. The purport of the motion moved by Shri P.R. Damle appears to be that the scheme of co-ordination already proposed by the Board of University Teaching and accepted by the Executive Council should be stayed for one year for the reasons given by him in his motion. Shri Damle requests the Chancellor to give his interpretation whether the ruling given by the Vice-Chancellor at the meeting of the Board of University Teaching was correct or not. The above motion was ruled out by the Vice-Chancellor on the ground that since the Board of University Teaching had already made its recommendations in the matter to the Executive Council, the Executive Council was seized of the matter and the Board of University Teaching could not make further recommendations. On the facts stated the ruling appears to be correct. In this case also Shri Damle does not contend that the interpretation given by the Vice-Chancellor on any provision of the Act or of any Statute or Ordinance or Regulation or rule is wrong. For the reasons given with reference to first reference, the matter does not fall under section 60 of the Act and the question of the Chancellor exercising his powers under section 60 does not arise.

Id/-J.R.D. 27/6
Remembrancer of Legal Affairs.

U.R. to E.D. No. 10188, dated the 27th June 1951.

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OFFICE OF THE R.L.A.

The first point for consideration is whether the reference made to the Chancellor by the Modern Education Society on behalf of the Newrosjee Wadia College in Poona is legal under section 60 of the Poona University Act, 1948. Section 60 of the Poona University Act, 1948, provides that if any question arised regarding any of the matters specified in the section, the matter shall be referred to the Chancellor. It is true that the section does not state specifically as to who shall be competent to x make the reference. But in the absence of any express provision to that effect, it would be proper to held that the reference under the section can be made by x any person or authority interested in the question. Such interest must be direct and real and not remote, academic or hypothetical (See R.L.A.'s Opinion No.3989 dated the 5th August 1932 regarding the interpretation of section 47 of the Bombay University Act, 1928). In this case circular No.175 dated 3rd May 1950 was issued by the Register of the Poona University to all the Principals of the affiliated (including the constituent) colleges intimating the decision of the Executive Council. The Newrosjee Wadia College is one of the Constituent colleges. The contention of the Principal of the College is that it is not within the competence of the Executive Council to issue the circular. It was, therefore, open to the Principal to make a reference to the Chancellor. The argument urged in E.D.notes that such references can only be made through the University or the Vice-Chancellor is not correct. It would not also be correct to held that such references should be sent to the Vice-Chancellor for disposal. The provisions of sec.60 would not warrant such a procedure. In fact, in the present case the reference is in regard to the

decision of the Executive Council of which the Vice-Chancellor is the -Ex-officio Chairman. The objection urged by the Vice-Chancellor that the entertaining of such references would amount to interference with the internal management of the University has no substance. If the question relates to a matter which appropriately falls within the scope of section 60 of the Poona University Act, it would not be open to the Chancellor to refuse to entertain a reference relating thereto.

2. The second question raised is whether Circular No.175 dated 3rd May 1950 issued by the Registrar of the Poona University is legal. It relates to the retirement age of the teachers including the Principals of Colleges (including the Constituent Colleges). The circular relates, therefore, to the conditions of service of the teachers in such colleges. It is clear that under section 39(3)(i) of the Act such matter can be provided by Statutes. Under section 28, the Court is the authority which is competent to make a Statutes. The Poona University is a corporate body constituted by a Statute. Such a body is entirely a creature of the Statute and as such acts ~~xxx~~ done by it without the prescribed formalities would be null and void. (In Maxwell on Interpretation of Statutes pp.302. Ed.9th). The contention urged by the Vice.-Chancellor that 'the absence of the word "only" in section 39 does not prevent the University to provide for the matter in question by a circular or rules' is entirely untenable and has no substance. The provisions of section 20(1)(xiv) of the Act relied upon by the Vice-Chancellor has no application. The said provision cannot over-ride the express provision in section 39(3) requiring Statutes to be

made by the Court as regards the matters specified therein. The circular, therefore, is not valid in so far as it relates to Constituent College like the Newresjee Wadia College.//In view of this conclusion it is not necessary to consider the contention of the Principal of that College that any instructions to constitent Colleges can only be given after inspection. That contention is, however, untenable, but so far as this case is concerned, it does not arise for the decision of the Chancellor.

3. As regards the question relating to the interpretation of sections 39 and 40 of the Poona University Act, the question was fully considered in Opinion No. 182-L(Conf1) dated 24th October 1950. The view expressed in that opinion has been accepted by the Chancellor and has been communicated to the Vice-Chancellor in the Chancellor's letter dated the 24th January 1951. The Principal of the Newresjee Wadia College in his reference dated the 9th March 1951 has again raised the same points. As correctly pointed out in E.D.notes it would not be proper to request the Chancellor to give a ruling on the same points again. The view taken by the Chancellor at the portion marked 'A' in para 31 of his printed memorandum substantially confirms the view expressed in the opinion above referred to. But as stated in that opinion the question for interpreting sections 39 and 40 has not yet arisen.

Id/-J.R.D. 8/6
Remembrancer of Legal Affairs.

U.R. to E.D.No. 544-Conf1 dated the 8th June 1951.

BKS. 26/6/ 4c.